



## ATTACHMENT A

### REMARKS

Claims 1-2, 4-6, 8-10 and 11-16 stand pending the present application. By this amendment, Applicants have amended claims 1, 6 and 8 and cancelled claims 3 and 7. Applicants respectfully submit the present application is in condition for allowance based on the discussion which follows.

Claims 1-10 were rejected under 35 U.S.C. § 112 second paragraph. With regard to claim 1, the Examiner alleges that claim 1 is confusing as to which dimension is intended by "the largest dimension...". Applicants respectfully submit that the reference to "the largest dimension" is clear on its face and would refer to a particular dimension such as length, width, thickness, etc. Applicants thus respectfully submit that the claimed support inherently will have dimensions, e.g., length, width, diameter or thickness, and based on the support claimed and further described in the specification, on page 3, line 25 to page 4, line 5, the largest dimension is the support's length. Further, by this amendment, Applicants have amended claim 1 to more clearly define the largest dimension to be the largest external dimension of the support, which in this case will be the support's length. Accordingly, Applicants respectfully submit that claim 1 is not indefinite and that the Examiner's objection to the language, insofar as applied to the amended claims, is respectfully traversed.

With regard to claims 6 and 7, the Examiner alleges that these claims do not limit the structure recited in claim 1, alleging these claims are directed to a method of intended use.

Applicants respectfully submit that claim 6 refers to the anodised metal surface layer, which is porous, and recited as having a pore size approximately matched to the probe molecules bound to the claimed support. Thus, claim 6 limits claim 1 via its further definition of the pores of the anodized metal surface layer which are optimized relative to the probe molecules. With regard to claim 7, the subject matter has been incorporated into claim 1 thereby rendering the rejection to claim 7 now moot.

Moreover, in the context of claim 1 (which includes the subject matter of now cancelled claim 7) and claim 6, the purported adaptation further defines the structure claimed thereby providing a structural limitation to the claimed support and thus distinguishing the claimed support from other supports. For example, a “spatially varying pattern” such as a barcode, is one way of achieving this and is to be contrasted with other ways, such as a magnetic label noted in the present specification on page 8, line 21. Thus, the subject matter of claim 7 now incorporated into claim 1 (currently amended) provides a structural limitation.

With regard to claim 10, the Examiner alleges that the recited “a series of holes in the support” is vague and indefinite. By this amendment as previously noted, Applicants have amended claim 1 to include the limitations of claim 7 thereby providing antecedent basis for the recited pattern and obviating the rejection to claim 10.

Based on the foregoing, Applicants respectfully request that the rejections to claims 1, 2, 4-6 and 8-10 under 35 U.S.C. § 112, second paragraph be withdrawn.

Claims 1-7 were rejected under 35 U.S.C. § 102(b) as being anticipated by EP 0 393 300 (hereinafter EP '300) or Rigby et al (hereinafter Rigby).

In order to more clearly recite what Applicants believe to be the invention, claim 1 has been amended to now recite, in part, the spatially varying pattern which was previously recited in claim 7 and to recite probe molecules for the biochemical assay are bound to the surface layer which was previously recited in claim 3.

Claim 1 (currently amended) is not anticipated by EP '300 or Rigby. The present invention, as recited in claim 1 (currently amended) is directed to a solid support for a biochemical assay. The support is substantially linear or planar in shape and incorporates a spatially varying pattern for identification purposes. The support has an anodised metal surface layer, probe molecules for the biochemical assay bound to the surface layer and a largest external dimension of the support is less than 100  $\mu\text{m}$ .

EP '300 discloses a thin film device having layers which generate a color response capable of detecting organic material. In sharp contrast to the present device which is microscopic due to its largest dimension being less than 100  $\mu\text{m}$ , the EP '300 device is visible to the eye and thus clearly a macroscopic rather than a microscopic device. Moreover, since the EP '300 device is visible to the eye, the EP '300 device includes a largest external dimension greater than the recited 100  $\mu\text{m}$ . Further, claim 1 as amended, provides further novelty over EP '300 in that the claimed solid support includes a spatially varying pattern for identification purposes which EP '300 fails to teach or suggest. Accordingly, EP '300 fails to teach or suggest the subject matter of claim 1 or claims 2, and 4-6 which depend therefrom.

Further, Rigby fails to teach or suggest the subject matter of claims 1, 2 and 4-6. Rigby is directed to a production method for microfiltration membranes. Although Rigby discloses a 100  $\mu\text{m}$  dimension, the 100  $\mu\text{m}$  dimension refers to the thickness and not

the largest dimension of the filtration membrane which is clearly larger than 100  $\mu\text{m}$ . Accordingly, claim 1 is not taught or suggested by Rigby which fails to disclose the recited largest dimension not being larger than 100  $\mu\text{m}$ .

Based on the foregoing, Applicants respectfully request that the rejection to claims 1, 2, and 4-6 as being anticipated by EP '300 or Rigby be withdrawn.

Claims 1-2 and 4-10 were rejected under 35 U.S.C. § 102(b) as being anticipated by Aurenus (U.S. Patent No. 5,129,974).

Applicants respectfully submit that claims 1-2 and 4-10 are not disclosed by Aurenus as Aurenus does not teach or suggest a largest dimension being less than 100  $\mu\text{m}$ . In fact, the smallest dimension of the disclosed Aurenus label is about 1 mm. Although, the width can be on the order of 0.1 mm, the other two dimensions are 1 mm by 1 mm. Further, although Aurenus discloses microlabels used for small items such as electronic components and a micro machine, and that the microlabels may be made of multicolored layers or bars of distinct colors which may be anodised, the microlabels disclosed are not suitable for forming aqueous suspension biochemical assays.

Based on the foregoing, claim 1 is novel over Aurenus. Accordingly, claims 1,2, 4-6 and 8-10 are not anticipated by Aurenus.

Claims 1-10 were rejected under 35 U.S.C. § 102(b) as being anticipated by GB 2 306 484 (hereinafter GB '484).

Contrary to the assertion, GB '484 fails to teach or suggest the claimed anodised surface layer. GB '484 describes coated particles for performing combinatorial chemistry. However, none of the particles have an anodised surface layer. Conversely,

the surface support of the present invention includes a layer which provides a significant advantage for promoting attachment of a wider range of biochemical active agents which is provided by, in part, an anodised metal surface layer. Furthermore, the claimed structure is distinguishable over the GB '484 system which disclosed embodiments where the coating and chemical functions of the particles are performed by two different "phases". Based on the foregoing, claims 1, 2, 4-6, and 8-10 are not obvious in view of GB '484.

Finally, although no prior art rejection was made based on cited reference WO 97/12680, the presently claimed invention is not anticipated by WO 97/12680 as this reference fails to teach or suggest an anodised surface layer and therefore fails to anticipate the claimed invention.

With regard to the Election/Restriction Requirement, Applicants respectfully submit that upon allowance of claim 1, the subject matter of restricted claims 11-16 and 17-21 should be rejoined with claims 1, 2, 4-6 and 8-10, where claim 1 presents a novel feature or single general inventive concept under PCT Rule 13.1 linking all claims. Accordingly, Applicants respectfully request that claims 11-16 and 17-21 be rejoined.

In view of the foregoing, Applicants respectfully submit that all claims are in condition for allowance.

**END REMARKS**